

Master Consultant Agreement – RWF Capital Projects

(CPMS Contract No. 8251)

This Master Agreement is between the City of San José, a municipal corporation ("City"), and
SCA Environmental, Inc. _____, a California Corporation ("Consultant").

This Master Agreement is made and entered into this ____ day of _____, 2017 (Contract Date)

THE CITY AND CONSULTANT AGREE AS FOLLOWS:

1. AGREEMENT SCOPE

- 1.1 **General:** The Consultant will provide professional consulting services to the City on an as-needed basis pursuant to individual service orders issued in accordance with the terms and conditions of this Master Agreement. The type of professional consulting services the Consultant will provide can be described generally as:
Industrial Hygienist On-Call Consultant Services to various projects at the San José-Santa Clara Regional Wastewater Facility (RWF).
- 1.2 **Exhibits:** This Master Agreement consists of this agreement form, all Approved Service Orders (defined in Subsection 3.2 below), and the following exhibits, which are incorporated herein by reference:
- Exhibit A: Service Order Form
 - Exhibit B: Basis of Compensation
 - Exhibit C: Insurance Requirements
- 1.3 **"Director":** "Director" means the Director of Environmental Services Department or the Director's designee.
- 1.4 **Business Days:** "Business Day" and "Business Days" means the day(s) on which City Hall is open to conduct regular business with the public.
- 1.5 **Entire Agreement:** This Master Agreement is the final, complete and exclusive understanding of the parties as to the matters contained herein. It supersedes all prior communications and understandings regarding such matters.
- 1.6 **Amendments:** This Master Agreement may be modified only by a written amendment executed by the parties.

2. AGREEMENT TERM

The term of this Master Agreement is from the Contract Date to June 30, 2024, inclusive, unless terminated earlier pursuant to Section 19 below.

3. SERVICE ORDERS

- 3.1 **General:** The Consultant will provide professional services to the City pursuant to individual service orders. Each service order will describe the services and deliverables (collectively "Work") the Consultant must provide, the schedule within which the Consultant must complete the Work and the compensation for the Work.
- 3.2 **Approved Service Order:** The Consultant cannot start performing any Work until the Director has executed the service order for such Work ("Approved Service Order").
- 3.3 **Obligation to Issue:** The City has no obligation to issue any Approved Service Orders under this Master Agreement. The City may issue any number of Approved Service Orders provided

that the sum of the maximum compensation of all Approved Service Orders cannot exceed the Maximum Total Compensation (defined in Subsection 10.1 below).

- 3.4 Preparation:** Each Approved Service Order will be in substantially the form specified in **Exhibit A**. Subject to the terms and conditions of this Master Agreement, the Consultant and the City will negotiate the specific requirements of each Approved Service Order.

3.4.1 Director's Request to Prepare Proposal: The Director will request the Consultant to prepare a written service order proposal. The Director will either request the Consultant to include a draft scope of Work in its proposal, or provide the Consultant with a draft scope of Work upon which the Consultant must base its proposal.

3.4.2 Meeting/Site Inspection: As part of the Director's request for the Consultant to prepare a service order, the Director may require the Consultant to meet to discuss the scope and location of the Work, the schedule of performance, and any other relevant details. The Director may also require the Consultant to conduct a site inspection for the purpose of identifying any issues that may need to be included in the scope of Work.

3.4.3 Consultant Proposal: The Consultant will prepare a written service order proposal in accordance with the Director's request. The Consultant will provide the proposal in both paper and electronic form. The proposal must include, but is not limited to, the following:

- The proposed scope of Work;
- The name and assignment of each of Consultant's professional employees who will be principally responsible for performing the Work;
- The names of any subconsultants the Consultant would use and the portion of Work they would perform;
- A time schedule and cost for providing the Work; and
- Any other information requested by the Director.

3.4.4 No Compensation for Preparing Service Orders: The City will not compensate the Consultant for preparing a service order proposal, whether or not that proposal is used to prepare an Approved Service Order.

3.4.5 Final Service Order: Once the Consultant and the Director agree on the terms and conditions of the proposed service order, the City will prepare the final service order.

- 3.5 Incorporation of Terms and Conditions:** Each Approved Service Order incorporates the terms and conditions of this Master Agreement, and becomes a part of this Master Agreement.

3.5.1 No Conflicts: An Approved Service Order must be consistent with – and can not alter – the terms and conditions of this Master Agreement.

3.5.2 Agreement Controls: The terms and conditions of this Master Agreement control over the terms and conditions contained in an Approved Service Order – even if the Approved Service Order expressly states that it is intended to control. Any conflicting terms and conditions in an Approved Service Order are invalid and unenforceable.

- 3.6 Performance:** Subject to Subsection 3.5 above, the Consultant must perform the Work in accordance with the specific requirements of the Approved Service Order. The Consultant must coordinate and cooperate with City staff, consultants and contractors in performing the Work, and must perform the Work to the Director's satisfaction.

4. DESIGN SERVICE REQUIREMENTS

- 4.1 **General:** This Section applies to any design services the Consultant performs as part of an Approved Service Order.
- 4.2 **Standard Documents:** The Consultant is, or will become, familiar with the City of San Jose, Department of Public Works, Standard Specifications, dated July 1992 (and any amendments thereto), the City of San Jose, Department of Public Works, Standard Details, dated July 1992 (and any amendments thereto), and any other standard documents the City uses to design and implement its capital projects (collectively "Standard Project Documents").
- 4.3 **Use of Standard Documents:** Unless the Director provides prior written approval to the contrary, the final design documents prepared by the Consultant must be based on, and must incorporate, the Standard Project Documents.

5. CITY'S PROJECT MANAGER

Attachment B of each Approved Service Order will identify the City's project manager. The City can change its project manager by providing the Consultant with written notice.

6. CONSULTANT'S STAFFING

- 6.1 **Consultant's Project Manager and Other Staffing:** Attachment B of each Approved Service Order will identify the following:
- The Consultant's project manager,
 - The Consultant(s) and/or employee(s) of the Consultant *principally responsible* for providing the Work, and
 - Any contract personnel or personnel employed through employment agencies that Consultant proposes to provide Work pursuant to the Approved Service Order.

Attachment B will also indicate whether any of the identified persons are required to file a Statement of Economic Interests, Form 700 ("Form 700"). Anyone required to file a Form 700 must do so in accordance with the requirements of Subsection 17.5 below.

- 6.2 **Project Manager's Authority:** The Consultant's project manager must be authorized to act on behalf of the Consultant for purposes of decisions regarding the Approved Service Order.
- 6.3 **Staffing Changes:** The Director's prior written approval is required for the Consultant to remove, replace or add to any of its staffing identified in Attachment B of an Approved Service Order.

7. USE OF SUBCONSULTANTS

- 7.1 **Authority to Use:** Attachment B of each Approved Service Order will state whether or not the Consultant can use subconsultants to provide any part of the Work. If Attachment B does not authorize the Consultant to use subconsultants, then the Director's prior written approval is required for the Consultant to use a subconsultant to perform any part of the Work.
- 7.2 **Use of Subconsultants:** If Attachment B of an Approved Service Order authorizes the use of one or more subconsultants, then it will identify the name of each such subconsultant and the portion of Work each such subconsultant will perform. The Director's prior written consent is required for the Consultant to remove, replace or add to the subconsultants identified in Attachment B.
- 7.3 **Subconsultant Work:** The Consultant warrants all services and deliverables provided by any subconsultant it uses, and represents that each such subconsultant is specially trained, experienced, and competent to perform its portion of the Work.

8. INDEPENDENT CONTRACTOR

- 8.1 **General:** The Consultant has complete control over its operations and employees, and is an independent contractor. The Consultant is not an agent or employee of the City, and does not represent or act as the City's agent or employee. The Consultant does not have any rights to retirement benefits or other benefits accruing to City employees, and expressly waives any claim it may have to any such rights.
- 8.2 **Subcontractors:** As an independent contractor, the Consultant has complete control over its subconsultants, subcontractors, suppliers, agents and any other person or entity with whom the Consultant contracts in furtherance of this Master Agreement and/or any Approved Service Order (collectively "Subcontractors"). Subject to the requirements of Section 7 above, the Consultant is solely responsible for selecting, managing and compensating its Subcontractors, and for ensuring they comply with this Master Agreement.
- 8.3 **Indemnity:** The Consultant shall place in each Subcontractor agreement indemnity obligations in favor of the City in the exact form and substance of those contained in Section 11 below.

9. STANDARD OF PERFORMANCE

The Consultant represents that it will only perform Work for which it possesses all necessary training, licenses and permits. The Consultant represents that its performance of all such Work will conform to the standard of practice of a professional that specializes in performing professional services of a like nature and complexity.

10. COMPENSATION

- 10.1 **Maximum Total Compensation:** The maximum total compensation the City will pay the Consultant for all Approved Service Orders issued under this Master Agreement shall not exceed \$ 500,000 ("Maximum Total Compensation").
- 10.2 **Basis of Compensation:** Exhibit B, Basis of Compensation, sets forth the methodology for compensating the Consultant. Compensation for all professional fees, costs and expenses related to the Consultant providing the Work shall be on an actual cost basis and only in accordance with this Section 10 and the Basis of Compensation.
- 10.3 **Maximum Service Order Compensation:** The cover page of each Approved Service Order will specify the maximum amount payable to the Consultant for all professional fees, costs and expenses related to the Consultant providing the Work ("Maximum Service Order Compensation"). The Consultant shall complete all Work required by the Approved Service Order for no more than the Maximum Service Order Compensation.
- 10.4 **Compensation Table:** Attachment C of each Approved Service Order is a table setting forth the amounts the City will pay Consultant for each cost component of an Approved Service Order ("Compensation Table"). Each Approved Service Order is subject to the terms and conditions set forth herein.
- 10.4.1 **Task Numbers & Task Descriptions (Column 1):** Column 1 sets forth the task number(s) and task description(s) for which the City will compensate the Consultant. Each task number and description corresponds to the same task number and description in Attachment A of the Approved Service Order. If a task number and description included in Attachment A is not included in the Compensation Table, then the City will not compensate the Consultant separately for that task, and payment for such task is deemed included in the other task(s) for which the Consultant is receiving compensation.
- 10.4.2 **Invoice Period (Column 2):** Column 2 identifies when the Consultant must submit its invoice for payment. If invoicing is monthly, the Consultant must submit its invoice to the City by the 10th Business Day of each month for Work completed during the previous month. If invoicing is upon the completion of a task or group of tasks, the Consultant

must submit its invoice to the Director within 20 Business Days following completion of the task(s) to the Director's satisfaction. If invoicing is upon the completion of all Work, the Consultant must submit its invoice to the Director within 20 Business Days following completion of all Work to the Director's satisfaction.

10.4.2.1 Information and Payment: Each invoice must include sufficient information and supporting documents to establish to the Director's satisfaction that the Consultant is entitled to the payment requested. The City will pay the undisputed portion of the invoice amount within 20 Business Days of the Director's approval of such undisputed amount.

10.4.2.2 Invoice Amounts: In accordance with **Exhibit B**, Basis of Compensation, each of Consultant's invoices shall set forth all costs incurred in performing Work completed during the invoice period, separated into the following categories: (1) the Direct Labor Rate (as defined in **Exhibit B**, Section 1.1.), including the calculations used to arrive at the Direct Labor Rate; (2) costs for Contract Personnel (as defined in Subsection 10.4.4); (3) Consultant's reimbursable expenses; and (4) subconsultant costs and subconsultant reimbursable expenses. If during the invoice period, Consultant has incurred costs other than the Direct Labor Rate, Consultant shall attach to its invoice to the City copies of receipts and invoices for such costs and expenses. The City shall not be responsible for any costs or expenses that are not properly and timely shown on a Consultant invoice in accordance with this Subsection 10.4.2.

10.4.3 Compensation for Services and Deliverables (Column 3): Column 3 of the Compensation Table sets forth the maximum amount that the City will pay for the Multiplier Compensation (as defined in **Exhibit B**, Section 1) for each task of the Approved Service Order.

10.4.4 Contract Personnel (Column 4): Column 4 of the Compensation Table sets forth the maximum amount that the City will pay for any of Consultant's contract personnel or personnel employed through employment agencies ("Contract Personnel") for each task of the Approved Service Order.

10.4.4.1 Approved Contract Personnel Only: The City will pay for Contract Personnel only if it has approved the use of the Contract Personnel for the tasks or areas of work as set forth in Attachment B of an Approved Service Order.

10.4.4.2 Contract Personnel Costs: The Consultant can invoice the City for no more than the actual cost of the Contract Personnel plus up to a 5 percent markup. Any Contract Personnel costs must be the Contract Personnel's actual rates and charges exclusive of any markup. The City will compensate the Consultant in accordance with those rates and charges.

10.4.4.3 Maximum Amount: For each Approved Service Order, the City will compensate the Consultant for all Contract Personnel in a total amount not to exceed the amount set forth in Column 4. Any additional Contract Personnel costs that the Consultant incurs in excess of the specified maximum amount are at no cost to the City.

10.4.5 Reimbursable Expenses (Column 5): Column 5 of the Compensation Table sets forth the maximum amount the City will pay for the Consultant's reimbursable expenses for each task of the Approved Service Order. The following terms and conditions apply if the City reimburses the Consultant separately for expenses.

10.4.5.1 Subconsultants: The cost of subconsultants is not treated as a reimbursable expense. Subsection 10.4.6 below addresses payment for the cost of subconsultants.

- 10.4.5.2 Maximum Amount:** For each task in an Approved Service Order, the City will reimburse the Consultant for expenses up to the maximum amounts set forth in Column 5. Any expenses that the Consultant incurs in excess of the stated maximum are at no cost to the City.
- 10.4.5.3 Expenses That Are Reimbursable:** The City will reimburse the Consultant only for those reimbursable expenses identified in **Exhibit B, Basis of Compensation**. The City will reimburse these expenses plus the specified markup set forth in **Exhibit B, Basis of Compensation**.
- 10.4.6 Subconsultant Costs (Column 6):** Column 6 sets forth the maximum compensation the City will pay the Consultant separately for subconsultant costs (including subconsultant reimbursable expenses) incurred for each task in the Approved Service Order. If the City will compensate the Consultant for subconsultant costs, the City will do so in accordance with the following terms and conditions.
- 10.4.6.1 Approved Subconsultants Only:** The City will pay for subconsultant costs only if it has approved the use of the subconsultant(s) for the tasks or areas of work as set forth in Attachment B of an Approved Service Order.
- 10.4.6.2 Subconsultant Costs:** The Consultant can invoice the City for no more than the actual cost of each subconsultant (excluding subconsultant reimbursable expenses) plus up to a 5 percent markup. Any subconsultant costs must be the subconsultant's actual rates and charges exclusive of any markup. The City will compensate the Consultant in accordance with those rates and charges.
- 10.4.6.3 Subconsultant Reimbursable Expenses:** If a subconsultant incurs expenses in performing work pursuant to an Approved Service Order that, if incurred by Consultant would be reimbursable expenses under this Master Agreement, the subconsultant's expenses also will be reimbursable in accordance with Section 2 of **Exhibit B, Basis of Compensation**. Subconsultant reimbursable expenses should be included in Column 6 of each Approved Service Order.
- 10.4.6.4 Maximum Amount:** For each Approved Service Order, the City will compensate the Consultant for all subconsultants in a total amount not to exceed the amount set forth in Column 6. Any additional subconsultant costs that the Consultant incurs in excess of the specified maximum amount are at no cost to the City.
- 10.4.7 Maximum Task Compensation (Column 7):** Column 7 sets forth the maximum compensation for each task in the Approved Service Order. Any costs incurred for which payment would result in a total exceeding the amounts in Column 6 will be at no cost to the City.
- 10.4.8 Reallocation of Task Budget(s):** If the Consultant completes a task(s) in an Approved Service Order for less than the maximum compensation set forth for that task(s), the Director (in the Director's sole discretion) **may** use the cost savings to increase the budget of another task in the same Approved Service Order. The Director must authorize such reallocation of cost savings in writing.
- 10.5 Conflict:** In the event of a conflict between this Section 10 and **Exhibit B, Basis of Compensation**, this Section 10 governs.
- 10.6 Tax Forms Required:** The following are conditions on the City's obligation to process any payment under the Master Agreement or any Approved Service Order:
- 10.6.1 U.S. Based Person or Entity:** If the Consultant is a U.S. based person or entity, the Consultant acknowledges and agrees that the Consultant is required to provide the City with a properly completed Internal Revenue Service Form W-9 before the City will process payment. If the Consultant is a U.S. based person or entity, but has neither a permanent place of business in California nor is registered with the California Secretary

of State to do business in California, the Consultant acknowledges and agrees that the Consultant is required to provide the City with a properly completed California Franchise Tax Board form related to nonresident withholding of California source income.

- 10.6.2 Non-U.S. Based Person or Entity:** If the Consultant is not a U.S. based person or entity, the Consultant acknowledges and agrees that the Consultant is required to provide the City with the applicable Internal Revenue Service form related to its foreign status and a California Franchise Tax Board form related to nonresident withholding before the City will process payment.

11. INDEMNIFICATION

- 11.1 Obligation:** The Consultant shall defend, indemnify and hold harmless the City and its officers, employees and agents against all claims, losses, damages, injuries, expenses or liabilities that – directly or indirectly, or in whole or in part – arise out of, pertain to, or relate to any of the following:
- The Consultant's negligent performance of all or any part of the services or deliverables provided pursuant to an Approved Service Order; or
 - Any negligent act or omission, recklessness or willful misconduct of the Consultant, any of its Subcontractors, anyone directly or indirectly employed by either the Consultant or any of its Subcontractors, or anyone that they control; or
 - Any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person(s) caused by the City's use of any services, deliverables or other items provided by the Consultant pursuant to an Approved Service Order; or
 - Any breach of this Master Agreement by the Consultant or any Subcontractor.
- 11.2 Limitation on Obligation:** The obligation in Subsection 11.1 above does not apply to the extent that any claim, loss, damage, injury, expense or liability results from the sole negligence or willful misconduct of the City or its officers, employees or agents.
- 11.3 Duty to Defend:** The Consultant's obligation in Subsection 11.1 above applies to the maximum extent allowed by law and includes defending the City as set forth in Sections 2778 and 2782.8 of the California Civil Code. Upon the City's written request, the Consultant, at its own expense, shall defend any suit or action that is subject to the obligation in Subsection 11.1 above.
- 11.4 Insurance:** The City's acceptance of any insurance in accordance with Section 12 below does not relieve the Consultant from its obligations under this Section 11. The Consultant's obligations under this Section 11 apply whether or not the insurance required by the Master Agreement covers any damages or claims for damages.
- 11.5 Survival:** The Consultant's obligations under this Section 11 survive the expiration or earlier termination of the Master Agreement.

12. INSURANCE REQUIREMENTS

- 12.1 General:** The Consultant shall comply with the insurance requirements set forth in **Exhibit C** for the Master Agreement term.
- 12.2 Documentation:** Before performing any services, the Consultant must submit to the City's designated risk manager ("Risk Manager"), for the Risk Manager's written approval, all documents demonstrating compliance with the requirements of **Exhibit C**.
- 12.3 Changes:** The Risk Manager may amend or waive, in writing, any of the requirements contained in **Exhibit C**.

13. OWNERSHIP OF WORK PRODUCT

- 13.1 Ownership:** The City owns all rights in and to any of the following work product (including electronic equivalents) immediately when and as created by the Consultant or any of its Subcontractors pursuant to an Approved Service Order: drawings, plans, elevations, sections, details, schedules, diagrams, specifications, studies, reports, surveys, data, information, models, sketches, and other similar documents and materials (collectively "Work Product").
- 13.2 Copyright:** To the extent permitted by Title 17 of the United States Code, the Work Product is deemed a work for hire and all copyrights in such Work Product are the property of the City. In the event it is ever determined that any Work Product is not a work for hire under United States law, the Consultant hereby assigns to the City all copyrights to such works when and as created.
- 13.3 City's Reuse:** The City's reuse of any Work Product is subject to California Business and Professions Code Sections 5536.25, 6735, 6735.3, 6735.4 or 8761.2, whichever is applicable.
- 13.4 Consultant's Reuse:** With the Director's prior written consent, the Consultant may retain and use copies of the Work Product for reference and as documentation of experience and capabilities.

14. DISCLOSURE OF WORK PRODUCT

- 14.1 Prohibition:** Except as authorized by the Director or as otherwise required by law, the Consultant shall not disclose any of the following to a third party: (a) Work Product, (b) discussions between the City and Consultant, or (c) information prepared, developed or received by the Consultant or any of its Subcontractors in the course of performing any Work.
- 14.2 Notification:** The Consultant will immediately notify the Director if it is requested by a third party to disclose any Work Product, discussions or information that the Consultant is otherwise prohibited from disclosing.
- 14.3 Limit on Prohibition:** The prohibition in Subsection 14.1 above does not apply to disclosures by and between the Consultant and its Subcontractors that are needed to perform any Work.
- 14.4 Survival:** This Section 14 survives the expiration or earlier termination of this Master Agreement.

15. AUDIT/INSPECTION OF RECORDS

- 15.1 Retention Period:** The Consultant shall retain the following records (collectively "Records") for a minimum of 3 years from the date of the City's final payment to the Consultant under this Master Agreement or for any longer period required by law:
- All ledgers, books of accounts, invoices, vouchers, canceled checks, and other records relating to the Consultant's charges for performing services, or to the Consultant's expenditures and disbursements charged to the City; and
 - All Work Product and other records evidencing Consultant's performance.
- 15.2 Producing Records:** At any time during the Master Agreement term or during the period of time that the Consultant is required to retain the Records, the City Manager, the Director, the City Attorney, the City Auditor, or a designated representative of any of these officers may request, in writing, production of all or a portion of the Records. The Consultant shall produce the requested Records at City Hall during normal business hours, or at any other location and time mutually agreed upon by the parties. The Consultant shall produce the requested Records at no cost to the City.
- 15.3 State Auditor:** In accordance with Government Code Section 8546.7, the Consultant may be subject to audit by the California State Auditor with regard to the Consultant's performance of this Master Agreement if the compensation if the Maximum Total Compensation exceeds \$10,000.

16. NONDISCRIMINATION/NON-PREFERENCE

- 16.1 Prohibition:** The Consultant shall not discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing.
- 16.2 Reasonable Accommodation:** The prohibition in Subsection 16.1 above is not intended to preclude the Consultant from providing a reasonable accommodation to a person with a disability.
- 16.3 Compliance Reports:** The City's "Compliance Officer", as defined in Section 4.08.020 of the San José Municipal Code, is responsible for administering this Section 16. The Compliance Officer may require the Consultant to file, and cause any Subcontractor to file, reports demonstrating compliance with this Section 16. Any such reports shall be filed in the form and at such times as the Compliance Officer designates. They shall contain such information, data and/or records as the Compliance Officer determines is needed to show compliance with this provision.
- 16.4 Violation:** A violation of the prohibition in Subsection 16.1 above or any part of this Section 16 constitutes the following: (a) a material breach of this Master Agreement; (b) a misdemeanor violation of Chapter 4.08 of the San José Municipal Code; and (c) a ground for debarment in accordance with Chapter 4.10 of the San José Municipal Code.
- 16.5 Subcontracts:** The Consultant shall include the above Subsections 16.1 through 16.4, inclusive, in each subcontract that it enters into in furtherance of this Master Agreement.
- 16.6 Waiver:** The Compliance Officer may waive any of the requirements of this provision if the Compliance Officer determines that the Consultant has its own nondiscrimination/nonpreference requirements or is bound in the performance of this Master Agreement by the nondiscrimination/nonpreference requirements of another governmental agency, and the nondiscrimination/nonpreference provisions of the Consultant or other governmental agency are substantially the same as those imposed by the City.

17. CONFLICT OF INTEREST

- 17.1 General:** The Consultant represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Master Agreement.
- 17.2 Representation and Warranty:** The Consultant represents and warrants that the representations made by the Consultant concerning unfair competitive advantage and conflicts of interest in connection with its submissions in response to the City's procurement for this Master Agreement were true and accurate both when made and as of the Contract Date.
- 17.3 Prohibition:** In performing this Master Agreement, the Consultant shall not engage in any conduct that constitutes an unfair competitive advantage or conflict of interest, or the appearance of either.
- 17.4 Notice:** The Consultant shall immediately notify the City in writing if it becomes aware of any facts giving rise to an unfair competitive advantage or conflict of interest, or the appearance of either. Following such notification, the City shall determine what actions, if any, should be taken in response to the Consultant's notification, up to and including termination of this Master Agreement.
- 17.5 Filing Form 700:** In accordance with the California Political Reform Act (Government Code Sections 8311-83116), the Consultant shall cause each person identified in Attachment B of an Approved Service Order as having to file a Form 700 to do each of the following:
- Disclose the categories of economic interests in Form 700 as required by the Director;

- Complete and file the Form 700 no later than 30 calendar days after the date the Consultant executes the Approved Service Order; and
- File the original Form 700 with the City's Clerk with a copy submitted to the Director.

17.6 Future Services: The Consultant acknowledges each of the following with regard to performing future services for the City:

- The Consultant's performance of Work in an Approved Service Order may create an actual or apparent conflict of interest with regard to the Consultant performing or participating in the performance of some related **future** services, particularly when the Work in an Approved Service Order comprises one element or aspect of a multi-phase process or project;
- Such an actual or apparent conflict of interest would be a ground for the City to disqualify the Consultant from performing or participating in the performance of such future services; and
- The Consultant is solely responsible for considering what potential conflicts of interest, if any, performing Work in an Approved Service Order might have on its ability to obtain contracts to perform future services.

17.7 Violations: It is a material breach of this Master Agreement if the Consultant fails to comply with any obligation contained in this Section 17, or if any representation made or information provided pursuant to this Section 17 is false or inaccurate in any material respect when made.

18. ENVIRONMENTALLY PREFERABLE PROCUREMENT POLICY

18.1 General: The Consultant shall perform its obligations under this Master Agreement in conformance with City Council Policy 1-19, entitled "Prohibition of City Funding for Purchase of Single serving Bottled Water," and City Council Policy 4-6, entitled "Environmentally Preferable Procurement Policy."

18.2 Prohibition of City Funding for Purchase of Single Serving Bottled Water: The City's policy is that City funds should not be used for the purchase of single-serving bottled water except for any of the following:

- Public safety emergencies, investigations and extended deployments or activation of the Office of Emergency Services;
- Situations where there is a high risk of cross-contamination with non-potable water; or
- Situations where there are no reasonable alternatives to bottled water, such as large public events and when large quantities of water need to be distributed for health and safety reasons.

An invoice seeking reimbursement from City for the cost of single-serving bottled water under one of the above exceptions must be accompanied by a waiver form provided by the City and signed by the Director.

18.3 Environmentally Preferable Procurement Policy: The Environmentally Preferable Procurement Policy, along with a brief policy description, is located on the City's website at the following link: <http://www.sanjoseca.gov/esd/natural-energy-resources/epp.htm>. Environmental procurement policies and activities related to the completion of any Work will include, whenever practicable, but are not limited to:

- The use of recycled and/or recyclable products in daily operations (i.e. 30%, 50%, 100% PCW paper, chlorine process free, triclosan free hand cleaner, etc.);
- The use of energy-star compliant equipment;
- The use of alternative fuel and hybrid vehicles, and implementation of protocols aimed at increasing the efficiency of vehicle operation;
- The implementation of internal waste reduction and reuse protocol(s); and

- Water and resource conservation activities within facilities, including bans on individual serving bottled water and the use of compostable food service products.

19. TERMINATION

- 19.1 **For Convenience:** The Director may terminate this Master Agreement and/or any Approved Service Order(s) at any time and for any reason by giving the Consultant written notice of the termination. The written notice must set forth the effective date of the termination, which must be at least 7 Business Days' after the date of the written notice.
- 19.2 **For Cause:** The Director may terminate this Master Agreement and/or any Approved Service Order(s) immediately upon written notice for any material breach by the Consultant. If the Director terminates the Master Agreement and/or any Approved Service Order(s) for cause and obtains the same services from another consultant at a greater cost, the Consultant is responsible for such excess cost in addition to any other remedies available to the City.
- 19.3 **Delivery of Work:** If the Director terminates the Master Agreement and/or any Approved Service Order(s) – whether for convenience or for cause – the Director has the option of requiring the Consultant to provide to the City any finished or unfinished Work Product prepared by the Consultant up to the date of Consultant's receipt of the written notice of termination.
- 19.4 **Compensation:** The City will pay the Consultant the reasonable value of Work satisfactorily rendered by the Consultant to the City up to the date of Consultant's receipt of the written notice of termination. For Work to be "satisfactorily rendered," the Director must determine that the Consultant provided the Work in accordance with the terms and conditions of this Master Agreement and/or any applicable Approved Service Order. The Director will determine the reasonable value of satisfactorily rendered Work based on the Basis of Compensation and the Compensation Table attached to the appropriate Approved Service Order.
- 19.5 **Receipt of Notice:** For purposes of this provision, the Consultant's receipt of the written notice of termination will be determined based on the date of actual receipt or based on Subsection 20.2 below, whichever occurs first.

20. NOTICES

- 20.1 **Manner of Giving Notice:** All notices and other communications required by this Master Agreement must be in writing, and must be made via e-mail, personal service or United States mail, postage prepaid.
- 20.2 **When Effective:** A notice or other communication that is e-mailed is effective when sent provided the sender receives an acknowledgement from the intended recipient (e.g. return receipt, return e-mail, or other written acknowledgement). A notice or other communication that is personally serviced is effective when personally delivered. A notice or other communication that is mailed is effective 3 Business Days after deposit in the United States mail.
- 20.3 **To Whom Given:** All notices and other communications between the parties regarding a specific Approved Service Order must be given to the project managers identified in the Approved Service Order. All notices and other communications between the parties regarding the Master Agreement must be given to the individuals identified below using the appropriate contact information for giving notice:

To the City:

City of San José
Environmental Services Department,
Attn: Domenic Onorato
700 Los Esteros Road
San Jose, CA 95134
(408) 635-4085
domenic.onorato@sanjoseca.gov

To the Consultant:

SCA Environmental, Inc.
Attn: Christina Codemo
650 Delancey Street, Suite 222
San Francisco, CA 94107
415-882-1675
ccodemo@sca-enviro.com

- 20.4 **Changing Contact Information:** Either party may change its contact information for receiving written notices and communications regarding the Master Agreement by providing notice of such change to the other party pursuant to this Section 20.

21. MISCELLANEOUS

- 21.1 **Gifts Prohibited:** The Consultant represents that it is familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City officer or designated employee from accepting any gift. The Consultant shall not offer any City officer or designated employee any gift prohibited by Chapter 12.08. The Consultant's violation of this Subsection 21.1 is a material breach.
- 21.2 **Disqualification of Former Employees:** The Consultant represents that it is familiar with Chapter 12.10 of the City's Municipal Code, which generally prohibits a former City officer and designated employee from providing services to the City connected with his/her former duties or official responsibilities. The Consultant shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10. The Consultant's violation of this Subsection 21.2 is a material breach.
- 21.3 **Waiver of a Violation:** The City's waiver of any violation of this Master Agreement by the Consultant is not a waiver of any other violation by the Consultant.
- 21.4 **Acceptance of Services Not a Waiver:** The City's acceptance of any service or deliverable is not a waiver or release of any professional duty of care applicable to such service or deliverable, or of any right of indemnification, any insurance requirements, or any other term or condition of this Master Agreement.
- 21.5 **Compliance with Laws:** The Consultant shall perform all services consistent with all applicable federal, state and local laws, ordinances, codes and regulations. This obligation is not limited in any way by the Consultant's obligation to comply with any specific law, ordinance, code or regulation set forth elsewhere in this Master Agreement.
- 21.6 **Business Tax:** The Consultant represents and warrants that it currently has a City business tax certificate or exemption, if qualified, and will maintain such certificate or exemption for the Master Agreement term.
- 21.7 **Assignability:** Except to the extent this Master Agreement authorizes the Consultant to use Subcontractors, the Consultant shall not assign any part of this Master Agreement without the Director's prior written consent. The Director, at the Director's discretion, may terminate this Master Agreement if a violation of this provision occurs.
- 21.8 **Governing Law:** California law governs the construction and enforcement of this Master Agreement.
- 21.9 **Disputes:** Any litigation resulting from this Master Agreement will be filed in and resolved by a federal or state court in California.
- 21.10 **Survival of Provisions:** If a court finds any part of this Master Agreement unenforceable, all other parts shall remain enforceable.

21.11 Headings: The section and exhibit headings are for convenience only and are not to be used in its construction.

IN WITNESS WHEREOF, the City and Consultant have caused this Master Agreement to be executed by their respective duly authorized representatives as follows.

NOTE: The Consultant must make one of the following representations by placing its initials in the space provided. The City will not process the Master Agreement unless the Consultant has initialed one of the provisions.

P The Consultant certifies that the Consultant has a permanent place of business in California or is registered with the California Secretary of State to do business in California. The Consultant will file a California tax return and withhold on payments of California source income to nonresidents when required. If the Consultant ceases to have a permanent place of business in California or ceases to do any of the above, the Consultant will promptly notify the City at the address specified in Subsection 20.3 of this Master Agreement.

Or

_____ If the Consultant is unable to make the above certification, the Consultant acknowledges and agrees to provide the City with the applicable tax forms issued by the Internal Revenue Service and California Franchise Tax Board, as applicable, as specified in Section 10.6 of this Master Agreement.

City of San José

By _____
Name: Toni Taber Date _____
Title: City Clerk

Consultant

By [Signature]
Name: Christina Codemo Date 4/10/17
Title: SCA Environmental, Inc.

Approval as to Form (City Attorney):

☐ **Master Agreement Form Approved by the Office of the City Attorney**
(Maximum Total Compensation is \$100,000 or less, and standard provisions of the Master Agreement form are not altered.)

By _____
Name: Insert Name Date _____
Title: Insert Title of Signature

☐ **Approved as to Form:**

[Sr.] Deputy City Attorney Date

Exhibit A
Master City of San José Consultant Agreement
Approved Service Order Form – RWF Capital Projects
Cover Page

1a. CPMS Contract No.: 8251	1B. AC Contract No.: Insert AC No.
2. Approved Service Order No. TBD	
3. Consultant's Name: SCA Environmental, Inc.	

4. Project Name: 8251- Industrial Hygienist On-Call Services	
5. Project Location: 700 Los Esteros Road, San Jose, CA 95134	
6. The Consultant and the City will implement this Approved Service Order in accordance with the Master Agreement, this cover page and Attachments "A" (Tasks), "B" (Terms and Conditions), "C" (Compensation Table), and "D" (Schedule of Specific Services) which are incorporated herein by references.	

7. Budget/Fiscal:			
a. Current unencumbered amount in Master Agreement:	\$	500,000	
b. Maximum Service Order Compensation for this Approved Service Order:	\$		
c. New unencumbered balance in Master Agreement (7.a – 7.b):	\$		
d. Appropriation Certification: I certify that an unexpended appropriation in the amount of the Maximum Service Order Compensation is available in the following fund(s) and that such fund(s) will be encumbered to pay for this Approved Service Order.			
Fund: _____	Appn: _____	RC: _____	Amount: \$ _____
Fund: _____	Appn: _____	RC: _____	Amount: \$ _____
Fund: _____	Appn: _____	RC: _____	Amount: \$ _____
Authorized Signature: _____			Date: _____

8. Division Analyst Approval: _____	Date: _____
9. Consultant Approval: _____	Date: _____
10. Approval as to Form (City Attorney):	
<input type="checkbox"/> Service Order Form Approved by the Office of the City Attorney (Maximum Service Order Compensation is \$100,000 or less, and the provisions of the service order form are not altered.)	
<input type="checkbox"/> Approved as to Form: _____ (Sr.) Deputy City Attorney	Date: _____
11. City Director Approval: _____	Date: _____

Attachment A: Tasks

The Consultant shall provide the services and deliverables set forth in this **Attachment A**. The Consultant shall provide all services and deliverables required by this **Attachment A** to the satisfaction of the City's contract manager.

General Description of Project for which Consultant will Provide Services:

Insert a general project description to provide context for the tasks.

Task No. 1: Insert Task Title / Description of Deliverable

- A. **Services:** Insert a description of the services required to perform or develop the deliverable. (See instructions.)
- B. **Deliverable:** Insert a description of the deliverable.
- C. **Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:
- ☐ On or before the following date: Insert Date.
- ☐ On or before Business Days from Insert Date.

Task No. 2: Insert Task Title / Description of Deliverable

- A. **Services:** Insert a description of the services required to perform or develop the deliverable. (See instructions.)
- B. **Deliverable:** Insert a description of the deliverable.
- C. **Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:
- ☐ On or before the following date: Insert Date.
- ☐ On or before Business Days from Insert Date.

Task No. 3: Insert Task Title / Description of Deliverable

- A. **Services:** Insert a description of the services required to perform or develop the deliverable. (See instructions.)
- B. **Deliverable:** Insert a description of the deliverable.
- C. **Completion Time:** The Consultant must complete the services and deliverable for this task in accordance with whichever one of the following time is marked:
- ☐ On or before the following date: Insert Date.
- ☐ On or before Business Days from Insert Date.

Attachment B: Terms and Conditions

1. **City's Contract Manager:** The City's contract manager for this Approved Service Order is:

Name: Domenic Onorato	Phone No.: 408-635-4085 / 535-8407
Department: Environmental Services Department	E-mail: domenic.onorato@sanjoseca.gov
Address: 700 Los Esteros Rd.	San Jose, CA 95134

2. **Consultant's Contract Manager and Other Staffing:** Identified below are the following: (a) the Consultant's contract manager for this Approved Service Order, and (b) the Consultant(s) and/or employee(s) of the Consultant who will be principally responsible for providing the services and deliverables. ***If an individual identified below does not have a current Form 700 on file with the City Clerk for a separate agreement with the City, and is required to file a Form 700, the Consultant must comply with the requirements of Subsection 17.5 of the Master Agreement, entitled "Filing Form 700."***

		<u>Required to File Form 700?</u>		
		Yes Already Filed (Date Filed)	Yes Need to File	No
<u>Consultant's Contract Manager</u>				
Name:	Phone No.:			
Address:	E-mail:			
<u>Other Staffing</u>				
<u>Name:</u>	<u>Assignment:</u>			
1.				
2.				
3.				

3. **Subconsultants:** Whichever of the following is marked applies to this Approved Service Order:

- ☐ The Consultant can ***not*** use any subconsultants.
- ☐ The Consultant can use the following subconsultants to assist in providing the required services and deliverables:

<u>Subconsultant's Name</u>	<u>Area of Work</u>
1. Subconsultant Name	Area of Work
2. Subconsultant Name	Area of Work
3. Subconsultant Name	Area of Work

4. **Contract Personnel:** Whichever of the following is marked applies to this Approved Service Order:

- ☐ The Consultant can ***not*** use any Contract Personnel.
- ☐ The Consultant can use the following Contract Personnel to assist in providing the required services and deliverables:

<u>Personnel/Agency Name</u>	<u>Area of Work</u>
1. Personnel/Agency Name	Area of Work
2. Personnel/Agency Name	Area of Work
3. Personnel/Agency Name	Area of Work

Attachment C: Compensation Table

The City will compensate the Consultant for providing the services and deliverables set forth in **Attachment A** in accordance with this Compensation Table. This Compensation Table is subject to the terms and conditions set forth in the Master Agreement, including without limitation Section 10 of the Master Agreement and **Exhibit B**, Basis of Compensation.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Task No. and Task Title from Attachment A	Invoice Period	Multiplier Compensation	Contract Personnel	Reimbursable Expenses (Including applicable markup)	Subconsultant Costs (Including markup)	Total Compensation
	<input type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$	\$	\$	\$	\$
	<input type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$	\$	\$	\$	\$
	<input type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$	\$	\$	\$	\$
	<input type="checkbox"/> Monthly <input type="checkbox"/> Completion of Task(s) <input type="checkbox"/> Completion of Work	\$	\$	\$	\$	\$
Maximum Compensation		\$	\$	\$	\$	\$

Exhibit B: Basis of Compensation

The Consultant's compensation for services provided pursuant to an Approved Service Order shall be in accordance with Section 10 of the Agreement and this **Exhibit B**. Consultant shall be compensated for Work performed pursuant to an Approved Service Order based on the following categories only: (1) multiplier compensation; (2) reimbursable expenses; (3) Contract Personnel costs; and (4) subconsultant costs.

1. **Multiplier Compensation.** As compensation for all of Consultant's employee labor costs and expenses, overhead and profit for performing Work required by an Approved Service Order ("Multiplier Compensation"), the City will pay Consultant an amount equal to the Consultant's Direct Labor Rate (as defined below) multiplied by 2.89 ("Multiplier"). Except for other costs and expenses expressly set forth in this Master Agreement as being compensable, the Multiplier Compensation shall be the Consultant's only compensation for all Work performed pursuant to an Approved Service Order.

- 1.1 **Direct Labor Rate.** For purposes of calculating the Multiplier Compensation, the direct labor rate shall be the sum of the number of hours worked by each of Consultant's employees pursuant to an Approved Service Order multiplied by the respective hourly rates paid by Consultant to such employees ("Direct Labor Rate"). The Direct Labor Rate shall be based on a normal 8-hour day, 40-hour week (e.g., no overtime, holidays or weekend rates) and shall exclude any other form of compensation (e.g., no bonuses, stock options, profit-sharing or equity arrangements). The Direct Labor Rate shall not include any labor other than Consultant's employees, including, without limitation, Consultant's Contract Personnel.

- 1.2 **Overhead Costs.** Consultant acknowledges and agrees that the Multiplier Compensation includes all of Consultant's overhead costs and expenses incurred in performing Work pursuant to this Master Agreement. The Multiplier is in lieu of itemized payments for fringe benefits, overhead expenses and associated project costs, including, without limitation:

- Fringe benefits, such as payroll taxes, holidays, vacation and sick time, health, life and accidental insurance, retirement plans, etc.
- Overhead or Indirect Costs, such as outside accounting and legal services, occupancy costs, depreciation costs, professional and general liability insurance, general management and administration, business taxes, etc.
- Associated project costs, such as costs to cover customary office costs, network infrastructure and information systems, CAD and computer usage, in-house reproducing services, including graphics and photocopying, printing, postage, overnight delivery, courier services, cell phone and data plan charges, etc.

- 1.3 **Profit.** Consultant acknowledges and agrees that the Multiplier Compensation includes all of Consultant's profit for performing Work pursuant to an Approved Service Order. City shall pay Consultant a profit equal to eight percent (8 %) of direct labor and overhead cost approved by the City. In no event shall City be responsible for paying any amount pursuant to an Approved Service Order for which Consultant's profit would exceed the foregoing percentage.

1.4 Rate and Cost Information. The Direct Labor Rate shall be based on the most current audit of the Consultant's payroll and financial records. The Consultant's overhead costs shall be based on the Consultant's latest audited Federal Acquisition Regulation (FAR) Overhead Statement. If a current audit is not available for the Direct Labor Rate or FAR Overhead Statement, the Direct Labor Rate and/or overhead costs shall be based on information acceptable to the City. The City retains the right to conduct an audit of the Consultant's payroll at any time during the term of this Master Agreement. Unless otherwise required under applicable law, including, but not limited to, the California Public Records Act, the City shall not disclose Consultant's payroll information to third parties without Consultant's prior written consent.

2. Reimbursable Expenses. The City will pay for the following reimbursable expenses under this Master Agreement:

Reimbursable Expense		Markup
1.	Specialty printing specifically requested by the City and printing associated with major deliverables that cannot be completed by Consultant in-house.	5%
2.	With the written pre-authorization of the City's project manager, mileage and other travel-related expenses to the same extent that the City reimburses its employees pursuant to the Employee Travel Policy (City Policy Manual, Sections 1.8.2 and 1.8.3). The Consultant acknowledges that it has received a copy of Sections 1.8.2 and 1.8.3 and is familiar with these sections of the Employee Travel Policy.	No Markup

The following expenses are not reimbursable and shall not be incorporated into any invoice amounts submitted to the City:

- Alcoholic Beverages;
- Meals and incidentals for Consultant and subconsultant staff working from their home office location, not the San José-Santa Clara Regional Wastewater Facility; and
- Entertainment.

- 3. Contract Personnel.** Consultant shall be compensated for Contract Personnel costs in accordance with Subsection 10.4.4 of the Agreement.
- 4. Subconsultant Costs.** Consultant shall be compensated for subconsultant costs in accordance with Subsection 10.4.6 of the Agreement.
- 5. Accuracy of Information.** Consultant certifies that cost and pricing information used to calculate its compensation pursuant to this **Exhibit B** will be complete, current and accurate at the time of submission to the City.